HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.22298 of 2006

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Between:

B.Nageshwara Rao and another

……Petitioners

And

The Union of India,
Rep., by its Secretary,
Health and Family Welfare Departmant,
New Delhi and five others

……Respondents

:: ORDER ::

Counsel for the Petitioners : Shri K.Pridhvi Raj

October 30, 2006

Per G.S. SINGHVI, CJ

In this petition filed in the name of public interest, petitioners – B.Nageshwara Rao and Mohammed Ayub have prayed for grant of a declaration that the omission of Andhra Pradesh Medical Council (for short, 'the Council') to take action against respondent No.6, Dr. B.Jagadish in terms of Rule 7.2 of Chapter VIII of the Indian Medical Council Act, 1956 (for short, 'the Act') and to punish him for professional misconduct is illegal and violative of Article 21 of the Constitution of India. They have further prayed for cancellation of D.CH. certificate of respondent No.6. Still further, they have prayed for institution of a CBI enquiry against respondent No.6.

In the affidavit filed by him, petitioner No.1 – B.Nageshwara Rao has averred that on account of the gross negligence of respondent No.6, his daughter aged 7 years died and 4 years old son of petitioner No.2 lost one leg and one hand. He has further averred that respondent No.6 does not possess the requisite recognized qualifications, but he is engaged in medical practice on the basis of fake degrees. In paragraph 4 of his affidavit, petitioner No.1 has averred that complaint made against respondent No.6 resulted in initiation of action by the Council, but the culprit has not been adequately punished.

We have heard Sri K.Prudhviraj, learned Advocate for the petitioners and carefully scrutinised the record. Petitioner No.2 and his wife are said to have addressed representation dated 14-3-2002 to some person with the complaint that due to negligence of respondent No.6, their son lost his leg and hand and, therefore, action be taken against the said respondent. Petitioner No.1 and his wife, Smt.B.Suryakumari are shown to have made representation dated 27-

4-2006 for taking action against respondent No.6. The same was forwarded by Deputy Secretary to Government of Andhra Pradesh, Health, Medical and Family Welfare Department to the Registrar of the Council for taking action as per the existing rules and send compliance report to the Government. On receipt of the communication sent by the State Government, the Council got an enquiry conducted through Ethical and Malpractices Committee, which noted that respondent No.6 passed MBBS from Andhra Medical College in 1973 and got himself registered with the Council on 11-10-1974 and subsequently got training in Post-Graduate School of Medicine, University of Vienna, Austria. The Committee opined that respondent No.6 is not entitled to display D.CH. qualification because his diploma in Pediatrics obtained from Vienna University has not been recognized. The recommendation of the Committee was placed before the General Body of the Council, which warned respondent No.6 not to use the qualification of Post-Graduate Diploma. This was conveyed to petitioner No.1 vide letter dated 18-9-2006. Petitioner No.1 and his wife also filed complaint under Section 12 of the Consumer Protection Act, 1986, which was registered as C.D.No.98 of 2000. In the complaint, respondent No.6 was impleaded as opposite party No.1. By an order dated 30th June, 2006, Andhra Pradesh State Consumer Disputes Redressal Commission (for short, 'the State Commission') awarded compensation of Rs.4,00,000/- together with costs of Rs.5,000/- against respondent No.6. Feeling dissatisfied, petitioner No.1 and his wife preferred an appeal, which is pending before National Consumer Disputes Redressal Commission (for short, 'the National Commission').

Learned counsel for the petitioners argued that the action taken by the Council against respondent No.6 is highly inadequate,

inasmuch as it has not gone into the complaint of negligence made against him and he has not been adequately punished. He then argued that if respondent No.6 is not stopped from continuing medical practice, a large number of people are bound to suffer.

In the context of the aforementioned submissions of the learned counsel, we enquired from Sri K.Prudhviraj as to whether the appeal filed by petitioner No.1 against the order of the State Commission is still pending before the National Commission and whether his clients lodged any criminal complaint against respondent No.6 in the matter of the alleged criminal negligence. In reply, Shri Prudhviraj stated that the appeal is still pending before the National Commission. On the issue of lodging of criminal complaint, Sri K.Prudhviraj could not give any satisfactory reply. He also could not convince us that the decision taken by the Governing Body of the Council is arbitrary or violative of any statutory provisions.

In view of the above, we do not find any justification to entertain the grievance of the petitioners that the Council has failed to take action against respondent No.6 and any adjudication by this Court is bound to prejudice the cause of either of the parties in the matter pending before the National Commission.

We are further of the view that the writ petition cannot be treated as a piece of public interest litigation. Rather, the same appears to have been instituted to espouse the individual cause of petitioner Nos.1 and 2.

With the above observation, the writ petition is dismissed. However, liberty is given to petitioner No.1 to pursue the appeal preferred by him against the order of the State Commission. Petitioner No.2 shall also be free to avail appropriate legal remedy against the so-called negligence exhibited by respondent No.6 while treating his

son.

As a sequel to dismissal of the main petition, WPMP. No.28313 of 2006 filed by the petitioners for interim relief is also dismissed.

G.S.SINGHVI, CJ

C.V.NAGARJUNA REDDY, J

30-10-2006

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